

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE MAY 24, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1133

Introduced by Senator Leno
(Coauthors: Senators Alquist, Cannella, and Lieu)

February 21, 2012

An act to amend Section 186.8 of, and to add Sections 236.6, 236.7, 236.8, 236.9, 236.10, and 236.11 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1133, as amended, Leno. Human trafficking.

Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution.

Existing law, the California Control of Profits of Organized Crime Act, defines criminal profiteering as any act committed or attempted, or any threat made for financial gain or advantage, that may be charged as a crime under specified provisions, including murder, money laundering, human trafficking, and crimes in which the perpetrator induces, encourages, persuades, threatens, or forces a person under 18 years of age to engage in a commercial sex act. Under existing law, property and assets acquired or received in exchange for the proceeds

immediately derived from the pattern of criminal profiteering activity are subject to forfeiture. The money proceeds from that forfeiture ~~is are~~ distributed as prescribed, ~~including, in any case.~~ *In cases* involving human trafficking of minors for purposes of prostitution or lewd conduct or in any case involving taking a person for prostitution in which the victim is a minor, ~~depositing the funds are deposited~~ in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs and for grants to community-based organizations that serve minor victims of human trafficking.

~~This bill would remove the provision distributing funds from forfeiture to the Victim-Witness Assistance Fund as provided above. The bill would also authorize the forfeiture of vehicles, boats, airplanes, money, negotiable instruments, securities, real property, or other things of value used for the purpose of facilitating the human trafficking involving a commercial sex act where the victim is an individual under 18 years of age at the time of the commission of the crime and property acquired through human trafficking or which was received in exchange for the proceeds of human trafficking of a person under 18 years of age when the crime involved a commercial sex act. The bill would prescribe the distribution of those funds, including to the General Fund of the state or local governmental entity, whichever prosecutes, and to the Victim-Witness Assistance Fund to be used upon appropriation for grants to community-based organizations that serve victims of human trafficking.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 186.8 of the Penal Code is amended to
- 2 read:
- 3 186.8. Notwithstanding that no response or claim has been
- 4 filed pursuant to Section 186.5, in all cases where property is
- 5 forfeited pursuant to this chapter and, if necessary, sold by the
- 6 Department of General Services or local governmental entity, the
- 7 money forfeited or the proceeds of sale shall be distributed by the
- 8 state or local governmental entity as follows:
- 9 (a) To the bona fide or innocent purchaser, conditional sales
- 10 vendor, or holder of a valid lien, mortgage, or security interest, if

1 any, up to the amount of his or her interest in the property or
2 proceeds, when the court declaring the forfeiture orders a
3 distribution to that person. The court shall endeavor to discover
4 all those lienholders and protect their interests and may, at its
5 discretion, order the proceeds placed in escrow for up to an
6 additional 60 days to ensure that all valid claims are received and
7 processed.

8 (b) To the Department of General Services or local governmental
9 entity for all expenditures made or incurred by it in connection
10 with the sale of the property, including expenditures for any
11 necessary repairs, storage, or transportation of any property seized
12 under this chapter.

13 (c) To the General Fund of the state or a general fund of a local
14 governmental entity, whichever prosecutes.

15 (d) In any case involving a violation of subdivision (b) of
16 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution
17 of the proceeds provided for by subdivisions (b) and (c), the
18 proceeds shall be deposited in the county children's trust fund,
19 established pursuant to Section 18966 of the Welfare and
20 Institutions Code, of the county that filed the petition of forfeiture.
21 If the county does not have a children's trust fund, the funds shall
22 be deposited in the State Children's Trust Fund, established
23 pursuant to Section 18969 of the Welfare and Institutions Code.

24 (e) In any case involving crimes against the state beverage
25 container recycling program, in lieu of the distribution of proceeds
26 provided in subdivision (c), the proceeds shall be deposited in the
27 penalty account established pursuant to subdivision (d) of Section
28 14580 of the Public Resources Code, except that a portion of the
29 proceeds equivalent to the cost of prosecution in the case shall be
30 distributed to the local prosecuting entity that filed the petition of
31 forfeiture.

32 (f) (1) In any case described in paragraph (29) or (30) of
33 subdivision (a) of Section 186.2, *or paragraph (33) of subdivision*
34 *(a) of Section 186.2 where the victim is a minor*, in lieu of the
35 distribution provided for in subdivision (c), the proceeds shall be
36 deposited in the Victim-Witness Assistance Fund to be available
37 for appropriation to fund child sexual exploitation and child sexual
38 abuse victim counseling centers and prevention programs under
39 Section 13837. Fifty percent of the funds deposited in the
40 Victim-Witness Assistance Fund pursuant to this subdivision shall

1 be granted to community-based organizations that serve minor
2 victims of human trafficking.

3 (2) Notwithstanding paragraph (1), any proceeds specified in
4 paragraph (1) that would otherwise be distributed to the General
5 Fund of the state under subdivision (c) pursuant to a paragraph in
6 subdivision (a) of Section 186.2 other than paragraph (29) or (30)
7 of subdivision (a) of Section 186.2, *or paragraph (33) of*
8 *subdivision (a) of Section 186.2 where the victim is a minor*, shall,
9 except as otherwise required by law, continue to be distributed to
10 the General Fund of the state as specified in subdivision (c).

11 SEC. 2. Section 236.6 is added to the Penal Code, to read:

12 236.6. (a) Any interest in a vehicle, boat, airplane, money,
13 negotiable instruments, securities, real property, or other thing of
14 value that was put to substantial use for the purpose of facilitating
15 the crime of human trafficking that involves a commercial sex act,
16 as defined in paragraph (2) of subdivision (g) of Section 236.1,
17 where the victim was less than 18 years of age at the time of the
18 commission of the crime, may be seized and ordered forfeited by
19 the court upon the conviction of a person guilty of human
20 trafficking that involves a commercial sex act where the victim is
21 an individual under 18 years of age, pursuant to Section 236.1.

22 (b) In any case in which a defendant is convicted of human
23 trafficking pursuant to Section 236.1 and an allegation is found to
24 be true that the victim was a person under 18 years of age and the
25 crime involved a commercial sex act, as defined in paragraph (2)
26 of subdivision (g) of Section 236.1, the following assets shall be
27 subject to forfeiture upon proof of the provisions of subdivision
28 (d) of Section 236.8:

29 (1) Any property interest, whether tangible or intangible,
30 acquired through human trafficking that involves a commercial
31 sex act where the victim was less than 18 years of age at the time
32 of the commission of the crime.

33 (2) All proceeds from human trafficking that involves a
34 commercial sex act where the victim was less than 18 years of age
35 at the time of the commission of the crime, which property shall
36 include all things of value that may have been received in exchange
37 for the proceeds immediately derived from the act.

38 (c) If a prosecuting agency petitions for forfeiture of an interest
39 under subdivision (a) or (b), the process prescribed in Sections
40 236.7 to 236.11, inclusive, shall apply, but no local or state

1 prosecuting agency shall be required to petition for forfeiture in
2 any case.

3 (d) Real property that is used as a family residence or for other
4 lawful purposes, or that is owned by two or more persons, one of
5 whom had no knowledge of its unlawful use, shall not be subject
6 to forfeiture.

7 (e) An interest in a vehicle that may ~~not~~ be lawfully driven with
8 a class C, class M1, or class M2 license, as prescribed in Section
9 12804.9 of the Vehicle Code, may not be forfeited under this
10 section if there is a community property interest in the vehicle by
11 a person other than the defendant and the vehicle is the sole vehicle
12 of this type available to the defendant's immediate family.

13 (f) Real property subject to forfeiture may not be seized, absent
14 exigent circumstances, without notice to the interested parties and
15 a hearing to determine that seizure is necessary to preserve the
16 property pending the outcome of the proceedings. At the hearing,
17 the prosecution shall bear the burden of establishing that probable
18 cause exists for the forfeiture of the property and that seizure is
19 necessary to preserve the property pending the outcome of the
20 forfeiture proceedings. The court may issue a seizure order pursuant
21 to this section if it finds that seizure is warranted or a pendente lite
22 order pursuant to Section 236.9 if it finds that the status quo or
23 value of the property can be preserved without seizure.

24 (g) For purposes of this section, no allegation or proof of a
25 pattern of criminal profiteering activity is required.

26 SEC. 3. Section 236.7 is added to the Penal Code, to read:

27 236.7. (a) If the prosecuting agency, in conjunction with the
28 criminal proceeding, files a petition of forfeiture with the superior
29 court of the county in which the defendant has been charged with
30 human trafficking that involves a commercial sex act, as defined
31 in paragraph (2) of subdivision (g) of Section 236.1, where the
32 victim was less than 18 years of age at the time of the commission
33 of the crime, the prosecuting agency shall make service of process
34 of a notice regarding that petition upon every individual who may
35 have a property interest in the alleged proceeds or instruments.
36 The notice shall state that any interested party may file a verified
37 claim with the superior court stating the amount of their claimed
38 interest and an affirmation or denial of the prosecuting agency's
39 allegation. If the notice cannot be given by registered mail or
40 personal delivery, the notice shall be published for at least three

1 successive weeks in a newspaper of general circulation in the
2 county where the property is located. If the property alleged to be
3 subject to forfeiture is real property, the prosecuting agency shall,
4 at the time of filing the petition of forfeiture, record a lis pendens
5 with the county recorder in each county in which the real property
6 is situated that specifically identifies the real property alleged to
7 be subject to forfeiture. The judgment of forfeiture shall not affect
8 the interest in real property of a third party that was acquired prior
9 to the recording of the lis pendens.

10 (b) All notices shall set forth the time within which a claim of
11 interest in the property seized is required to be filed pursuant to
12 Section 236.8.

13 SEC. 4. Section 236.8 is added to the Penal Code, to read:

14 236.8. (a) A person claiming an interest in the property,
15 proceeds, or instruments may, at any time within 30 days from the
16 date of the first publication of the notice of seizure or within 30
17 days after receipt of actual notice, file with the superior court of
18 the county in which the action is pending a verified claim stating
19 his or her interest in the property, proceeds, or instruments. A
20 verified copy of the claim shall be given by the claimant to the
21 Attorney General or district attorney, as appropriate.

22 (b) (1) If, at the end of the time set forth in subdivision (a), an
23 interested person, other than the defendant, has not filed a claim,
24 the court, upon motion, shall declare that the person has defaulted
25 upon his or her alleged interest and the interest shall be subject to
26 forfeiture upon proof of the provisions of subdivision (d).

27 (2) The defendant may admit or deny that the property is subject
28 to forfeiture pursuant to the provisions of this chapter. If the
29 defendant fails to admit or deny or to file a claim of interest in the
30 property, proceeds, or instruments, the court shall enter a response
31 of denial on behalf of the defendant.

32 (c) (1) The forfeiture proceeding shall be set for hearing in the
33 superior court in which the underlying criminal offense will be
34 tried.

35 (2) If the defendant is found guilty of the underlying offense,
36 the issue of forfeiture shall be promptly tried, either before the
37 same jury or before a new jury in the discretion of the court, unless
38 waived by the consent of all parties.

39 (d) At the forfeiture hearing, the prosecuting agency shall have
40 the burden of establishing beyond a reasonable doubt that the

1 property alleged in the petition comes within the provisions of
2 Section 236.6.

3 (e) Unless the trier of fact finds that the seized property was
4 used for a purpose for which forfeiture is permitted, the court shall
5 order the seized property released to the person that the court
6 determines is entitled to possession of that property. If the trier of
7 fact finds that the seized property was used for a purpose for which
8 forfeiture is permitted, but does not find that a person who has a
9 valid interest in the property had actual knowledge that the property
10 would be or was used for a purpose for which forfeiture is
11 permitted and consented to that use, the court shall order the
12 property released to the claimant.

13 SEC. 5. Section 236.9 is added to the Penal Code, to read:

14 236.9. (a) Concurrent with or subsequent to the filing of the
15 petition, the prosecuting agency may move the superior court for,
16 and the superior court may issue, the following pendente lite orders
17 to preserve the status quo of the property alleged in the petition:

18 (1) An injunction to restrain anyone from transferring,
19 encumbering, hypothecating, or otherwise disposing of the
20 property.

21 (2) Appointment of a receiver to take possession of, care for,
22 manage, and operate the assets and properties so that the property
23 may be maintained and preserved. The court may order that a
24 receiver appointed pursuant to this section be compensated for all
25 reasonable expenditures made or incurred by him or her in
26 connection with the possession, care, management, and operation
27 of property or assets that are subject to the provisions of this
28 section.

29 (b) No preliminary injunction may be granted or receiver
30 appointed without notice to the interested parties and a hearing to
31 determine that an order is necessary to preserve the property,
32 pending the outcome of the criminal proceedings, and that there
33 is probable cause to believe that the property alleged in the
34 forfeiture proceedings are proceeds, instruments, or property
35 interests forfeitable under the provisions of Section 236.6.
36 However, a temporary restraining order may issue pending that
37 hearing pursuant to the provisions of Section 527 of the Code of
38 Civil Procedure.

1 (c) Notwithstanding any other provision of law, the court in
2 granting these motions may order a surety bond or undertaking to
3 preserve the property interests of the interested parties.

4 (d) The court shall, in making its orders, seek to protect the
5 interests of those who may be involved in the same enterprise as
6 the defendant, but who were not involved in human trafficking
7 that involves a commercial sex act, as defined in paragraph (2) of
8 subdivision (g) of Section 236.1, where the victim was less than
9 18 years of age at the time of the commission of the crime.

10 SEC. 6. Section 236.10 is added to the Penal Code, to read:

11 236.10. (a) If the trier of fact at the forfeiture hearing finds
12 that the alleged property, instruments, or proceeds are forfeitable
13 pursuant to Section 236.6 and the defendant was engaged inhuman
14 trafficking that involves a commercial sex act, as defined in
15 paragraph (2) of subdivision (g) of Section 236.1, where the victim
16 was less than 18 years of age at the time of the commission of the
17 crime, the court shall declare that property or proceeds forfeited
18 to the state or local governmental entity, subject to distribution as
19 provided in Section 236.11. No property solely owned by a bona
20 fide purchaser for value shall be subject to forfeiture.

21 (b) If the trier of fact at the forfeiture hearing finds that the
22 alleged property is forfeitable pursuant to Section 236.6 but does
23 not find that a person holding a valid lien, mortgage, security
24 interest, or interest under a conditional sales contract acquired that
25 interest with actual knowledge that the property was to be used
26 for a purpose for which forfeiture is permitted, and the amount
27 due to that person is less than the appraised value of the property,
28 that person may pay to the state or the local governmental entity
29 that initiated the forfeiture proceeding the amount of the registered
30 owner's equity, which shall be deemed to be the difference between
31 the appraised value and the amount of the lien, mortgage, security
32 interest, or interest under a conditional sales contract. Upon
33 payment, the state or local governmental entity shall relinquish all
34 claims to the property. If the holder of the interest elects not to pay
35 the state or local governmental entity, the property shall be deemed
36 forfeited to the state or local governmental entity and the ownership
37 certificate shall be forwarded. The appraised value shall be
38 determined as of the date judgment is entered either by agreement
39 between the legal owner and the governmental entity involved, or,
40 if they cannot agree, by a court-appointed appraiser for the county

1 in which the action is brought. A person holding a valid lien,
2 mortgage, security interest, or interest under a conditional sales
3 contract shall be paid the appraised value of his or her interest.

4 (c) If the amount due to a person holding a valid lien, mortgage,
5 security interest, or interest under a conditional sales contract is
6 less than the value of the property and the person elects not to
7 make payment to the governmental entity, the property shall be
8 sold at public auction by the Department of General Services or
9 by the local governmental entity. The seller shall provide notice
10 of the sale by one publication in a newspaper published and
11 circulated in the city, community, or locality where the sale is to
12 take place.

13 (d) Notwithstanding subdivision (c), a county may dispose of
14 real property forfeited to the county pursuant to this chapter by
15 the process prescribed in Section 25538.5 of the Government Code.

16 SEC. 7. Section 236.11 is added to the Penal Code, to read:

17 236.11. Notwithstanding that no response or claim has been
18 filed pursuant to Section 236.8, in all cases where property is
19 forfeited pursuant to this chapter and, if necessary, sold by the
20 Department of General Services or local governmental entity, the
21 money forfeited or the proceeds of sale shall be distributed by the
22 state or local governmental entity as follows:

23 (a) To the bona fide or innocent purchaser, conditional sales
24 vendor, or holder of a valid lien, mortgage, or security interest, if
25 any, up to the amount of his or her interest in the property or
26 proceeds, when the court declaring the forfeiture orders a
27 distribution to that person. The court shall endeavor to discover
28 all those lienholders and protect their interests and may, at its
29 discretion, order the proceeds placed in escrow for up to an
30 additional 60 days to ensure that all valid claims are received and
31 processed.

32 (b) To the Department of General Services or local governmental
33 entity for all expenditures made or incurred by it in connection
34 with the sale of the property, including expenditures for necessary
35 repairs, storage, or transportation of property seized under this
36 chapter.

37 (c) (1) Fifty percent to the General Fund of the state or local
38 governmental entity, whichever prosecutes *or handles the forfeiture*
39 *hearing*.

- 1 (2) Fifty percent to the Victim-Witness Assistance Fund to be
- 2 used upon appropriation for grants to community-based
- 3 organizations that serve victims of human trafficking.

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